FIELD HEARING IN ARIZONA: SMALL BUSINESS ACCESS TO CAPITAL IN SCOTTSDALE, ARIZONA

HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT AND REGULATIONS

OF THE

COMMITTEE ON SMALL BUSINESS
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HOUSE OF REPRESENTATIVES

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SMALL BUSINESS ACCESS TO CAPITAL IN SCOTTSDALE, ARIZONA

MONDAY, SEPTEMBER 23, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT AND REGULATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:00 p.m., in Enterprise Room, Skysong Innovation Center, Arizona State University, 1475 North Scottsdale Road, Scottsdale, Arizona, Hon. David Schweikert [chairman of the Subcommittee] presiding.

Present: Representative Schweikert.

Also Present: Representative Gosar.

Chairman SCHWEIKERT. Before we actually start getting on some of the traditional opening script, I want to share with you. The Committee and Subcommittee staff have actually been very kind to those of us who are members as we are also trying to build a record, as we often refer to it, from hearings all over the country of what is actually going on, what is happening in different regions, what is working, what isn't working, because we often find different parts of the country have very different views.

So with that, thank you for all being here. I would like to first start today's hearing by thanking our witnesses for being here.

I would also like to thank the staff of Skysong. Is the actual title really "Skysong Innovation Center"? Okay. And is Kubion around? He didn't come? You know he is my cousin. Yes, I just thought I would share that.

Thank you to Arizona State University for assisting my office and arranging the room and this hearing.

In Washington, part of my role as a Subcommittee Chair on the House Small Business Committee is to hold Congressional hearings on topics that are important to small business. There is a two-part mission to these hearings. First, the testimony that we receive helps educate members of Congress on relevant issues that help us better represent the needs of small businesses throughout the country.

So far this year, as Chairman I have held hearings on the Securities and Exchange Commission and their accountability for missing deadlines and the great frustration we have on the JOBS Act in regards to what the Securities and Exchange Commission has just blown through all their deadlines, which is one of the few bipartisan pieces of legislation we have had through Congress in the last

couple of years, and we can't get the regulatory bodies to finish their work sets.

We have also held hearings on the Regulatory Flexibility Act and its goal of reducing overall burdens of Federal regulations on small business.

Congressional hearings can also serve as educational tools for the community, also for small business and those who are trying to understand that relationship.

As chairmen, we receive testimony on innovative ways small businesses are raising capital by hearing from crowd-funding websites. We had a great hearing earlier this year with Indiegogo, Fundrise, Rock the Post, as well as, believe it or not, Samuel Adams brewery, whose leadership have set up—it is not technically a micro-funding platform, but they are putting money into small, growing businesses around the country. A very innovative thing for a company to do is to take part of its capital and engage in such lending.

Today we want to bring that same opportunity to Scottsdale to examine the current environment for small business trying to raise capital. Our goal is to talk about the resources available here that small business can access to grow their business and create jobs.

To that end, we will hear from our witnesses who are either investing in, creating, or advising local small businesses, to see what is available in this marketplace.

Again, I thank you all for being here.

And with that, let me also just explain—do we have the lighting system? The running joke is everyone gets 5 minutes. When you are down to 4, the yellow light goes on. Yellow means talk faster. And at red, we are supposed to be done with the time. I am not going to be particularly persnickety because we are all not running off to floor votes, but trying to keep it fairly crisp gives the opportunity to have some dialogue back and forth because, I promise you, somewhere you are going to say something that sets off questions from both Congressman Gosar and myself, and staff, and maybe each other.

With that, I was actually going to let Congressman Gosar do an opening statement, and then I was going to come and give one last bit.

Mr. GOSAR. I am going to keep mine short.

Chairman SCHWEIKERT. What happen when—Congressmen not getting their microphones on—Our first witness today is Jim Goulka. Did I get it right?

Mr. GOULKA. Good enough. Thank you.

Chairman SCHWEIKERT. What would be perfect?

Mr. GOULKA. Goulka.

Chairman SCHWEIKERT. Isn't that what I said?

Mr. GOULKA. I thought you said Goulka.

Chairman SCHWEIKERT. All right. Managing Director of the Arizona Technology Investors Forum, a group of angel investors. Jim is also CEO of Jumpstart Solutions, an early-stage business intelligence software company, and has been involved in several other technology companies throughout his career. Jim, I know, had some interesting things to share with us.

Jim, you have 5 minutes.

STATEMENTS OF JIM GOULKA, MANAGING DIRECTOR, ARIZONA TECHNOLOGY INVESTORS FORUM, MESA, ARIZONA; NIMA JACOB NOJOUMI, CO-FOUNDER AND CEO, ITSWORTH, LLC, TEMPE, ARIZONA; THOMAS H. CURZON, SENIOR PARTNER, OSBORN MALEDON, PHOENIX, ARIZONA

STATEMENT OF JIM GOULKA

Mr. GOULKA. Thank you, Chairman Schweikert. Thank you. Thank you, Congressman Gosar, for inviting me. I will try to be as brief and as concise as I can.

Starting a business, which is really the part of small businesses that I am particularly interested in, is a life-changing event for entrepreneurs. So you think about how they start their businesses. A few people have some ideas. There is nothing there. It is an idea. And then they have to turn that idea into a real, actual business.

So they need some money for that. So they put some of their own money into the business. Then they go to their friends and family, and sooner or later they are going to run out of that kind of money.

So where do they go after that? There are, obviously, grant programs around from the Federal Government and from the state. But even those are difficult to come by, and so they start to think about other people with cash, cash to invest.

The first thought, of course, is to go to a bank. But if you are a young person in particular, if you have an idea and no assets and you are using your savings to go into the business, you are essentially unbankable, and most of the banks know that, and most people understand that.

So young entrepreneurs or old entrepreneurs have to find other sources of capital, people who are able to understand that a new business is a risky business. The new risky business might be changing the world. It might be changing behavior. It may work or it may not. So who do they go to to find this kind of money?

Well, there are angels and there are venture capitalists, the usual two crowds of people. Venture capitalists generally understand the important characteristic for real small businesses is that they are not interested in doing transactions of less than $2 million. So if you are a small business and you are looking for a half-a-million dollars or a million dollars, there aren't very many VCs that will do that kind of funding, and there are certainly no VCs in Arizona doing that kind of funding.

So that naturally drives entrepreneurs to angels. And who are angels? We are, according to the SEC, accredited investors. We meet their test to do that. We are individuals who are willing to risk our own money on an uncertain venture in the hopes of achieving a superior economic return.

What does that mean? It means that we are prepared to take a loss of 100 percent of our money. It means we understand that. It means that we have the ability to absorb that kind of a risk, that kind of a loss, and we think that we can deal with that by being very careful about what we do, collaborating with other people of like mind, maybe not the same attitude but like mind to evaluate opportunities and select those that we think are really good investments.

That is pretty sophisticated stuff. We learn to do this by doing it. We do transactions. We learn from each other. Arizona Technology Investor Forum is a group of people that does this together, and part of the benefit of it is that we learn from each other. And as a result, we can do better transactions.

But here we are in Arizona. There are 170 or so angels in the organized angel groups of ATF and Desert Angels. We know that there are many more people here who could invest in these kinds of transactions. Part of our responsibility is to become acquainted with those people and show them how to do it, show them the kinds of risks, show them how we mitigate risk, show them how they can make a judgment on their own to participate in a transaction, and then give them the opportunity to do that.

So we are interested in finding and building the angel population in Arizona. Angels here are investing in early-stage or start-up businesses that are not investing specifically in real estate but in these other things where you can lose all of your money. So now we look at how can we do that better.

Part of what we do at our angel group is to have education programs. We have our Sidecar Fund is what we call it. It is a fund to enable people to learn how to do what we do, and most importantly, we have the 71 individuals who are mentors to each other, showing each other what is going on. Unfortunately, the new changes that the SEC is proposing in 506(c) start to curtail the ability for current angels to continue to do our angel investing and make it much more difficult for new angels to enter the fray because they have to disclose information that they have never, ever had to disclose before, which means they are not going to do a deal. And more than anything else, this is an impediment to doing more transactions here.

Thank you.

Chairman SCHWEIKERT. Thank you, Jim. Actually, I would love to talk to you some more about the accredited investor rules that may be coming out of the SEC.

Our second witness is Jacob Nojoumi.

Mr. NOJOUMI. Nojoumi.

Chairman SCHWEIKERT. Close enough. Co-Founder of itsWorth.com, a website that is looking to be the resource for finding the value of everything in the world, which is actually a concept I have a fascination on because one of the things our office has worked on for years is shouldn't everything of value have a platform it could be traded on.

Prior to starting itsWorth.com, Jacob worked in various roles for the local company named GoDaddy.

Jacob, 5 minutes. Share with us.

STATEMENT OF NIMA JACOB NOJOUMI

Mr. NOJOUMI. Congressman Gosar and Chairman Schweikert, I appreciate the opportunity to speak today. My name is Nima Jacob Nojoumi and I come from a long lineage of entrepreneurs. I am the Co-Founder and CEO of itsWorth.com. I recall when Shad Nojoumi initially approached me with the concept for our big data startup. He said, "Nima, I want to valuate the world." That statement put a huge smile on my face. After doing thorough research, I came to

the realization that with today's technologies, there is no reason why we couldn't create the world's first valuation engine. The concept is both simple and powerful, an engine that provides users with up-to-date, real-world financial values.

itsWorth.com is the Google of values. We are on a mission to provide an unbiased valuation of the world people can contribute to and feel empowered by to make informed buying and selling decisions.

My three best friends and I, who at one point were colleagues at GoDaddy, decided to pool our life savings together and take a chance, to live the American Dream. Today, we have 8.4 million products in our database and are six weeks from releasing our Software-as-a-Service platform. We are extremely grateful for local experts like Tyler Rives of Silicon Valley Bank in Tempe and Evan Gilbert of Polsinelli Law Firm for helping position us for success.

However, I have traveled to California 10 times this year alone to gain access to advisers and talent, to build relationships with angel investment groups and with the venture capital community. It has been a long and hard journey. I am here to say entrepreneurs in Arizona should not have to leave the state to gain access to human or financial capital. The time is right. Arizona has an emerging startup community. It needs to develop, it needs to mature and grow up fast. That is the problem and the opportunity.

Fortunately for us, there are celebrated experts that have outlined the structures, systems and processes, and the social architecture to develop an ecosystem. I cite Dr. Barry Stein's 1974 MIT dissertation: "Human resources are the wealth of nations; each nation has the responsibility as well as the need to develop and conserve them. But human resources are not the simple equivalent of physical persons, as mere existence does not automatically create human beings. Rather, they develop through participation in social life."

Mr. Mark Tomizawa, a strategist and entrepreneur, invested the past five years of his life developing social architecture to deploy in real time, and I quote him: "As for the ecosystem, we need freedom, support and know-how, as individuals at work, in school and in life, to do the right thing. That means more humans supporting each other, live and in real time. That means passing knowledge, mindfully, from generation to generation. That is part of how a healthy society is defined."

I am here to say that as a state, we are leaving money and opportunity on the table. We can and we must do better. We must coordinate better and connect the dots more strategically. The stand-alone organizations must join forces to create an ecosystem of opportunity, an ecosystem of human capital, and an ecosystem of local job creation. We can and we must become known as a great state where great ideas come to life.

To cross the chasm from communities to ecosystem, we need to leverage existing resources, thought leaders like Dr. Stein and Mr. Tomizawa, and bridges that work on an integrative level. Tyler Rives, Evan Gilbert and I are examples of bridges. We naturally connect people to resources and initiatives.

I believe conversations like these are essential and will serve as a catalyst for change and growth. I am not here to ask the Small

Business Committee for solutions. I am asking that you leverage and organize existing capital, whether it is human or financial, to provide entrepreneurs with the opportunities they need to meet today's evolving market conditions and to remain loyal residents of the great State of Arizona.

Chairman SCHWEIKERT. Thank you, Jacob.

I would like now to introduce our next witness, Tom Curzon, Senior Partner for the law firm of Osborn Maledon, where he represents emerging growth-oriented companies. Thomas has also been involved in Invest Southwest, a local fundraising event which helps small business access more than $250 million since 1992.

Thomas, 5 minutes. Share with us.

STATEMENT OF THOMAS H. CURZON

Mr. CURZON. Thank you, Mr. Chairman and Mr. Gosar. As the note said, I have been practicing law here for over 33 years, more than 30 of that representing startups or investors in startups. I have been involved in all kinds of organizations in our ecosystem, one of which is Invest Southwest that you referred to, which is basically the venture capital conference that has been in Arizona since 1992.

It has evolved with the markets and through three recessions, and it basically serves as an annual—you can think about it as a forum where we invite investors, both venture and angel investors, all accredited historically, to attend the several-day event, and then we invite companies seeking growth capital, not small doughnut shops and pizza parlors but companies that aspire to be the next big company.

They apply. We will typically get 50 to 100 applicant companies. They go through a rigorous selection process, and then we pick 10 to 12 of those companies who will do a pitch, a 10-minute pitch to the audience, and then by that we hopefully will expose them to potential investors so that they can then begin a journey that we hope will lead to them being funded by somebody at the conference or perhaps in the chain of networking events that we all know happens. They will end up getting funded because they surfaced.

The event has been the premiere capital conference in Arizona for a very long time. We are continuing to offer it, and in light of the changing capital circumstances, we are restructuring it again, and we will hopefully be serving it up next March.

It is an important part of our ecosystem here, and one of the things I want to accomplish is answering questions that you may have about it so that you better understand how events like it work.

One of the things that we are struggling with right now in the leadership—and I am on the board of directors of it and am helping in that planning—is what do we do in light of the new rules that become effective today, and in light of the proposed rules, the comment period that ended today under Regulation D.

Our dilemma is that we would like to have it be as all-inclusive as possible. It has typically been accredited-only invitees. We can keep it that way, but because of the new general solicitation and advertising rules, there is now a question whether a demo day type

of event or an event like what we are doing will be now deemed to be general solicitation, when before we didn't think it was.

It has never been bright-line clear, but the way the ecosystem has worked here and in Silicon Valley and Boston and everywhere else is that that kind of event, you are not committing a sin if you hold the event and you have companies pitch and so forth, and if they happen to do deals, it worked out.

Now we don't know, and we can't get advice out of the SEC. We know it is not in Congress' hands. It is in the SEC's hands. But it is a dilemma. If you see Tech Crunch, if you see any of the publications right now, it is a question that everybody is asking in our ecosystem, how can we keep doing these events that are immensely important.

The thing I want to pass along for the Committee's understanding to help understand, in the world of the principally high-tech capital raising, capital formation, the angel venture world, what has happened over the last several decades is the evolution of an ecosystem where people have figured out how to do the deals relatively efficiently without driving up a lot of legal cost. The paperwork the deals are done on is pretty standardized now, not because of any rules but because of the efficient marketplace, and because it has been in the context of this accredited-only regulatory regime.

That is part of the secret sauce, is being able to keep the cost down, keep as much of the legal work out as you can, and have the market function smoothly, and it has worked pretty well.

The observation I would make about the recent crowd-funding changes on the public side, as well as in the accredited-only side, is it is injecting a whole new level of cost, and by that I mean principally legal fees. I think that jeopardizes the public side of it, the public crowd funding, because of the needs of those small businesses now to spend money on lawyers to do the paperwork the SEC wants, or seems to want, and it is going to be a challenge because of that to it actually working, and that is the point I think I want to emphasize, the practical side of what they are doing.

With that, I would be happy to, at the right time, take questions.

Chairman SCHWEIKERT. Thank you.

I may actually go because you actually started with a couple of lines that I would love to dig into.

First off, with the reinterpretation, the lifting of the ban to general solicitation, how is that helping, how is that hurting? And you see that now also in conflict with some of the mechanics and the definition of qualified investor?

Mr. CURZON. Well, the way we work the conference is we want to have as big an attendance as we can for the event to expose potential investors to these companies, right? Now, typically what we have done is we have required accredited-only investors to register, and they have self-certified. So they show up——

Chairman SCHWEIKERT. But now you can broadcast the message to a much larger audience, but your concern now is the certification?

Mr. CURZON. Well, we have to be—we are put to a choice. If we do it the same way we have done it before, we would limit the conference attendees to accredited investors and ask them to self-cer-

tify, and we would be telling the companies who are attending that we are relying on the old rules, right? And it would be that audience.

If we don't do that and we broadcast more broadly, then the risk is it would be deemed to be a general solicitation, and under the rules that apply to that, the way the SEC is talking under the proposed rules about the Form D filings, you could have a footfall. They could violate those inadvertently, or they could put themselves, by participating, into the now 506(c). Get it?

Chairman SCHWEIKERT. Okay, I am tracking with you. But that still isn't completely called out in the rule sets yet, is it?

Mr. CURZON. No, it is not. So now it is a big, fat question. Our event is in March.

Chairman SCHWEIKERT. You hit one of my fixations on the cost of future equity crowd-funding, if we ever finally get the full sets of rules there.

Mr. CURZON. Right.

Chairman SCHWEIKERT. How about something like the conference you do, actually controlling creating a crowd-funding platform? So you would become not only—trying to create the love connections at that type of conference, but also maybe even some of your smaller players to actually be a crowd-funding hub.

Mr. CURZON. This is my personal opinion. This is not something that we talked about. My guess is we would say that is somebody else's expertise. There are a bunch of companies out there exploring the ins and outs of becoming platforms.

Chairman SCHWEIKERT. I just have a great concern that we find a way to template much of the mechanics of it, therefore to drive down the cost.

Mr. CURZON. Right.

Chairman SCHWEIKERT. Obviously, the first handful of players carry much of the regulatory presentation, graphing, cost burden.

Mr. CURZON. Right, right. The other thing to know—I mean, my take on it is that the kinds of companies that will use the public crowd-funding mechanisms that are being discussed are not likely to be appealing to the growth investors, the angels and the venture capitalists who are seeking big company plays because of the dollar limits, the algorithm of the dollar limits and the number of investors that would be required, and the amount of money that would be required to build those companies.

Chairman SCHWEIKERT. This is probably a different conversation. I have always thought it would be a great test, testing the waters, for proof of concept of an idea.

Mr. CURZON. Maybe, maybe.

Chairman SCHWEIKERT. But, we will see.

Jacob, on your current venture, I have a dozen questions for you, and probably some of them are more appropriate offline. What talent sets have you had the greatest difficulty finding here in Arizona?

Mr. NOJOUMI. Without a doubt, engineering.

Chairman SCHWEIKERT. Okay. Now, is that engineering to give you a value on things you are trying to—I mean, is it the platform underneath? What type of engineering?

Mr. NOJOUMI. We are working with financial quants that help us with the algorithms for the depreciation. But the engineering we are looking for is PHP/MySQL engineers, how to work with hadoop and large database systems. That has been a real challenge for us here locally. I had to source talent from California, from Florida, all around the nation, but nothing locally. I visited with local groups like Gang Plank and was unsuccessful.

Chairman SCHWEIKERT. Okay. So this is your system. You are building an SQL——

Mr. NOJOUMI. PHP/MySQL.

Chairman SCHWEIKERT. Okay. All right. I keep forgetting I am a decade out of date from everyone.

Mr. NOJOUMI. No worries.

Chairman SCHWEIKERT. From when I used to write script.

Second, the model of your business—and this is just sort of an aside—are you going to be using transactional data, something like the second markets of the world that are trying to find a way to take sort of everything that is out there in life and put it in some way where you can create a transactional connection? I mean, how do you do your valuation?

Mr. NOJOUMI. Valuation consists of actual historical sales data, and we have recruited engineers who had a work history at Google to help us write SPDRs and APHRs and crawlers to crawl the Web, very much like Google does, extract data on valuations, and also a consumer contribution is another factor, and then financial quants are coming in to help us with the rates of depreciation for sectors and individual products. So, the combination.

Chairman SCHWEIKERT. Have you ever met the folks at Second Market?

Mr. NOJOUMI. I have not.

Chairman SCHWEIKERT. Let me get an introduction there, because they are working very hard in trying to actually create a platform to actually do transactions on things you typically would not think are tradable.

Mr. NOJOUMI. That is interesting.

Chairman SCHWEIKERT. Next question. You are telling me you have had great difficulty in finding the engineering talent to build your database. How about the talent, like the gentleman sitting to your right, on being able to finance and potentially take your organization and set it up to go public one day, or however you choose to finance it?

Mr. NOJOUMI. Well, I have traveled to California for that very purpose, to build relationships with these venture capitalists and with angel investors.

Chairman SCHWEIKERT. You didn't find any of those types of venture capitalists here in Arizona?

Mr. NOJOUMI. Unfortunately not, no. What I am aware of is there is a limited number of these. I have done some research on a few of them and, unfortunately, one of them had a competing interest where Google Ventures was an investor, basically like online consignment, which isn't a direct threat to us but it is in competition, so we chose not to go with them. That is why I have been to California and back so many times, is to build those relationships,

and it is unfortunate that California is known as that hub and that ecosystem, and that Arizona is not.

Chairman SCHWEIKERT. Have there been any particular regulatory hubs either from our state or Federal that have also caused you angst?

Mr. NOJOUMI. Haven't really worked on any Federal level as of yet, no. We bootstrap the company ourselves, the founders, and actually generate revenue before we get capital.

Chairman SCHWEIKERT. Right.

Tom, tell Jacob why he is wrong and why he could have found the VC here.

Mr. GOULKA. I am Jim.

Chairman SCHWEIKERT. I am so sorry.

Mr. GOULKA. I don't know the answer, because we haven't talked. One of the characteristics in any market like this is that—in our example, because it is a good one, we look at 125 to 150 companies a year, and we will fund five of them, which is typical of angel groups around the country, which is typical of VC groups. So that means that if there are 150 companies and we fund five, there are 145 disappointed companies which, by definition, can't find capital here. So there is always going to be a degree of discontent because it is a competitive environment and there are winners and losers, and there are a lot more losers than winners even within the context of capital that is available.

The bigger issue, the more systemic issue that we have is that we are only 71 people. We have only been around for five years, six years in Phoenix, and our counterparts in Tucson are a little larger and a little older. But we are a very small subset of the total potential angel population in the state.

Chairman SCHWEIKERT. Jim, and we sort of started to touch on this even before the hearing. Mechanically, you are mostly in the angel space, whether it be VC or private equity. How much talent do you find even beyond the money, accounting talent, legal talent, compliance talent? I mean, do we have a robust enough infrastructure underneath the money?

Mr. GOULKA. In all those areas of expertise, we have a plethora of competence. In marketing, in sales, in go-to-market strategizing, in accounting, in legal, in IP, all of those activities we have lots and lots of very fine, very competent, highly qualified people to do that work. So we are not short of that.

What we are missing is there is an issue about engineers in Arizona, and the issue ultimately is an engineer may work for a company for a year, working in a startup. You don't know whether the company is going to be around for three or four years or five years or longer. So if you are a young engineer and you are looking at taking a job in a company that may only be there for 18 months, you have to look at where am I going to go from that job to the next one. You may have a hard time discerning the opportunities, the plethora of opportunities here for re-employment, and that becomes the beacon that Silicon Valley shines out into the world. They say you have lots of opportunities here. If the first one doesn't work, we have the second and the third and the fourth.

So the development of entrepreneurial businesses like his is an issue. We have to find ways of incentivising young people to stay

here, and the way you do that is really the second part, which is that they are not very well connected to each other.

I have lived in 10 states, and this is the most disconnected community I have ever lived in. I could get anything done in New York in three phone calls, or in Washington, or in Chicago, or in Dallas, or in Minneapolis. I can't do that here because I don't know who to call, and I have been here for a few years.

Chairman SCHWEIKERT. All right. Before I hand it to Congressman Gosar, I have to follow up.

Tom, do you agree?

Mr. CURZON. Yes. I would add the note that the engineering problem is actually a national problem. It is hard to find engineers everywhere, and their cost has gone through the roof.

But, yes, we have a very fragmented in the sense of dispersed kind of ecosystem, lots of individuals in the rowboats rowing in circles.

Chairman SCHWEIKERT. Okay. When we do our second round, I am going to come back to all of you and just say give me an idea, because I know we have a dozen different Chamber groups, industry groups, congressional offices that have been trying to find some way to create that sort of portal where we drive our people and our information through. Why are we failing?

Congressman Gosar?

Mr. GOSAR. Thank you.

Jim, I want to come back to do you see only engineers as being the focal point of being what is inadequate about our system here in Arizona?

I mean Tom. Sorry.

Mr. CURZON. Yes. I wouldn't even point to the lack of engineers. I think that is just a supply issue. A lot of my clients are solving the problem using virtual teams from all over the country and just using it over the Internet.

I just spent an hour-and-a-half this morning brainstorming this issue with somebody, and our takeaway in part is that there is a lack of momentum of successes. Part of the getting people together and one success leads to another success, the kind of serial entrepreneur. A company has a big success, and then 10 people from that company go out and become angels and they invest in the next company, and then you just have this big ripple effect.

We haven't had a ripple effect since the late '90s, except occasionally, and as soon as we get one of those, I think we will see some really great things happen. One of the things in my notes you will see, or in my testimony that bears on this is the Arizona Commerce Authority's Arizona Innovation Challenge Business Plan Competition is a big deal. In my opinion, it is a really big deal. And the reason it is a big deal, it is a semi-annual business plan competition, $1.5 million each time to typically six companies. It is not the winners that are the most important thing. It is that we have had 810 applications in the last three years, which brings visibility to companies, most of those we never heard of. And now they are exposed to our mentoring systems and to investors to see and that kind of stuff.

That is, I think—I think we are going to look back and it is going to be one of the most important things that will have happened,

and it is a momentum issue, right? It is getting the light of day on these so the investors will take their dough and put it out, and the winners.

Mr. GOSAR. Part of that also comes back to big government dictating winners and losers. I mean, government is supposed to be fostering an environment to allow that to sort out. I mean, you made the comment that you have sorted out the streamlined process. It is not what government has been doing. It is what you have been doing on a solid business scale, and we have tipped that scale. Would you agree?

Mr. CURZON. If government gets into the business of making those kinds of decisions, yes, that is not optimal. I think when you have—the way Invest Southwest works, the way actually the Arizona Innovation Challenge works, with a judging panel of investors where they are picking those—it is not a government picking them—I think it works best.

Mr. GOSAR. Jim, do you like that?

Mr. GOULKA. I do, actually. I have been part of the Innovation Challenge. I see how it works. The opportunity to get many companies that come out of—it seems like they come out of the woodwork. I mean, I have spent a large amount of my day, every day, seeking out companies as candidates for investment because our doors are open. We are looking for places to put our dollars. And the Innovation Challenge found many, many, many companies I had never heard of before, some of which have subsequently gotten funding from us.

So it does work. That is an instance of utility here, because it was the big government enabling a bunch of investors to make the choices for the state capital to be deployed. So there was some risk involved there.

To my mind, the issues really are staying out of the way, first and foremost. We don't need a lot of rules to do what we do. To find opportunities for companies to grow, and particularly to attract other investors, the way that there can be good incentives coming from government are through capital gains tax credits of one sort or another. They do exist at the Federal level and do exist with the Arizona Angel Tax Credit in the state because those add an element of potential return to investors for taking the risks that they are taking. It doesn't obviate the risk, but it says if the risk is successful, that there is a gain. So in that weighing of opportunity, of gain or risk, it tilts it properly and enables the person to take a better risk, and that will be attractive to people who have never done this sort of thing before.

Mr. GOSAR. Is our economy and the composition of our business in the State of Arizona compared to others, does it preclude certain industries over other industries?

Mr. GOULKA. Well, we were talking a little earlier about the importance that serving the needs of the population that has moved into the state over the years—a nicer way to say it than just real estate. But, in fact, we have seen enormous population growth for the last 60 years. It doesn't take a genius to figure out that you can make money serving all those needs, whether you are building houses, building roads, building schools, becoming a teacher in a

school, working in a restaurant or any of those things, serving the ordinary needs of a massive influx of human beings.

What that has done is it has made it so easy to make money in that fashion over most of the years that the more risky kinds of things such as startups, where you are creating something altogether new, like his business—it is altogether new; before he thought of it, there wasn't that—that is a riskier thing. So that says to a person of means, I can take a high risk, and I can take a lower risk. Which should I do? Then it is about the kinds of returns for those risks.

So, yes, I think we have had a skewed economy, but that doesn't mean that it has been so completely skewed that nothing else exists. We have successes in technology. We have life science companies that are successful. We have software companies that are successful. We have GoDaddy, one of the most extraordinary stories around, that is right here, and it stays here.

So we are not devoid of it. We haven't developed it as well as we could. I call us adolescents in that. We have to work at developing them into a full-fledged ecosystem, and that is dealing with what I call the disconnectedness.

Mr. GOSAR. By utilizing some of the spinoffs that we have seen out of TGen and ASU, do you think there is a better relationship that we should have with our major university partners in regards to looking at investment into spinoffs and new technology?

Mr. GOULKA. I think the universities are working very hard at becoming good at a very difficult thing. Tech transfer is very difficult to do, even under the best of circumstances. If you look at Stanford and Cal Tech and MIT, and even Columbia, it is still a difficult thing to accomplish. How do you bring scientists and engineers and business people together? And in a university setting, particularly one that wants to find alternative sources of income, this looks like a good one. But the hurdles that we have in this are serious.

The first is if I as a licensor require from you, a licensee, a large amount of money for a license on the front end, only the wealthy can afford that. If, on the other hand, that cost is lower, it makes it easier for small businesses to do this, and I can speak to this from personal experience. My software company is the result of two people, my partner and I, acquiring a license from NASA Ames of some software they built over a five-year period, and it was very easy to work with NASA, much easier to work with NASA than it is to work with ASU or the University of Arizona. So there is learning to be done in that tech transfer activity.

The second part is the connections between scientists, engineers, and business people. Many people choose to be researchers in the university setting because they are not interested in business. So working on methodologies intramurally about this is a good thing to take your idea and commercialize it, it is not just about greed and all that, it is about taking your ideas and bringing it to a larger population and serving them, that needs to be done, and we are not very far along in that.

Chairman SCHWEIKERT. Well, thank you. And I need to follow up on that one. It is because of the residual model, or is it the up-front cash——

Mr. GOULKA. It is absolutely the up-front cash. That is the issue.

Chairman SCHWEIKERT. Okay. So, let's hunker down. So when you are going to do that licensing transfer, it is just the amount of capital up-front, and when you did your agreement with the NASA-developed software, that model was different?

Mr. GOULKA. It was a very small up-front fee.

Chairman SCHWEIKERT. And did they take a residual?

Mr. GOULKA. Absolutely. We pay them every year for it, and that is fine because it is based on our revenues. So the more we grow, the better off they are, and that is the way successful licenses work. If we would have had to pay a quarter of a million dollars to acquire our license, we would not have acquired it. That meant the technology would be sitting on a shelf today, and there are businesses that have generated billions of dollars for their institutions, and it wasn't from a billion-dollar up-front fee. It was from the success of the business made by entrepreneurs with some scientific new idea.

Chairman SCHWEIKERT. It is interesting. I think REA and I, we had some meetings with ASU and U-of-A on this very similar subject. So it is going to be real high on the checklist.

From your view of the world, and you touched on this in your opening statement, but I want to sort of bounce through them, 506(c) and some of the improvements, changes, the solicitation rules—and you know I am not happy with what they have been doing on the credit investor mechanics and possibly now having to have a third party certification—where are you hitting your greatest concern, and would you believe for our angel investor community here in Arizona, where do you see your greatest legal liability right now when you are trying to put something together?

Mr. GOULKA. The issue ultimately is how hard is it to do a transaction. And as Tom mentioned earlier, there are now additional costs. Some of those will be dollar costs, but some of it is simply the new disclosures of information that has never been disclosed before to third parties, whether it is an intermediary or an entrepreneur.

So we have done transactions, private transactions. Self-declaration works. And when you think about this, when we do a transaction, first off, to become a member of our group, you have to self-declare as an accredited investor. Secondly, all the documents that I have ever seen for the closing of a private securities transaction require you to re-declare that you are an accredited investor, and there are legends in the documents that say you understand this is a high-risk investment and all that. That is easy.

The problem is with the general side, you have to do more than that. The simple language for it is, well, if you want to do that, you have to provide your tax return or some simulacrum to somebody else. Initially, it is the entrepreneur.

So I would just put it this way: Would you want to give your tax return to me, somebody you met an hour ago, and you kind of like my idea?

Chairman SCHWEIKERT. You have seen some of the articles I have written. I am enraged about what the SEC is doing in regards to this whole category. How would you fix it?

Mr. GOULKA. I would say that it turns on two pieces. Piece one is, is an accredited investor simply somebody who has to provide a financial statement to somebody else, or is an accredited investor really a sophisticated investor? And you can define that differently.

Chairman SCHWEIKERT. And that, I know, is sort of the fight that is going on, let's call it discussion. The discussion that is going on out there is are you an accredited investor because you have this much cash in the bank or this much net worth, or are you an accredited investor because you have this much expertise in what you intend to invest in? Just because you may have had a great real estate deal doesn't make you a brilliant engineer. You may be a brilliant engineer, but you don't have $1.2 million in the bank. And we go around and around on this one now for almost two-and-a-half years.

Mr. GOULKA. The second part of it is, when we make our investments, we are writing a check, cash, for 100 percent of the asset that we are buying. We are not financing this. This isn't like getting a mortgage for a building. This is buying a pen. I may be paying $25,000 for this pen, but I am writing this check now. So who is at risk?

Chairman SCHWEIKERT. Okay. Forgive me for going off on a lark. What I have learned is, in D.C. particularly, there is a cultural split on the value of risk-taking. Much of what has made this country amazingly successful is a culture of risk-taking and the benefits that come from that. There is a fixation by many in Congress and in the bureaucracy that we need to create a risk-free society, and you see that if you have ever had to sit through a Financial Services Committee. Paul knows, because we talk about this all the time.

If you create a big enough bureaucracy, you make it risk-free because there will be no transactions. You just stop them. Of course, there will also be no rate of return, no multiplier in the economy, and we flat-line. But there really is this sort of terrible fear of you take a risk, what if he loses money? And the same arrogance sort of works its way down into the accredited investor rules.

A simple example I have is I have a very good friend, a brilliant engineer. He has a couple of friends who started a business that he actually sort of helped give them the idea. He is not allowed to invest in it because he is not accredited. They have already filled up the other. But he could walk in, and if they were listed as a mutual fund or other type of investment, or a certain private equity fund, he could invest. We have an absurd system right now.

Paul, do you have any other questions? Because then I have some other more technical things.

Mr. GOSAR. I have one more thing for Tom. It seems like what we see is a Federal Government ratcheting down the biosphere in which you function. Would you agree with that? And if you were to make a pitch to the Federal Government in regards to rules, regulations, what would you do in regards to that to make this a better application so that instead of an equal outcome, we just had equal opportunity?

Mr. CURZON. Personally, I think one of the reasons that immediately preceding accredited-only mechanisms work so well, setting aside the definition of who is accredited—that is its own fight—is

that if, in fact, you had only accredited investors, it cured almost all sins. So you could put together that deal and you were pretty sure it was going to be fine because you had accredited investors.

Now, an example of where we are now making it more difficult is under the new 506(c), even if you had sold only to accredited investors, if it turns out the government says, the SEC says that you didn't conduct a reasonable diligence into those, you have violated the statute and you have a year ban on being able to fix it. That is just dumb.

Chairman SCHWEIKERT. Paul, can I leap in on you just to that point?

Mr. GOSAR. Sure, go ahead.

Chairman SCHWEIKERT. So it is that liability tree that exists there. And as our official lawyer on the panel——

Mr. CURZON. It is not the liability that is bothersome. It is the uncertainty that causes people like Jim and me not to invest. What will happen is there will be more companies that won't get investors because there are questions about that.

Chairman SCHWEIKERT. If I can get that rule locked down and a crisp definition there, does that make a difference?

Mr. CURZON. Make a huge difference. If entrepreneurs and those wanting to invest in those companies can have predictability about whether those target companies are clean or not, then you have eliminated an obstacle. Today, because of these changes, there are new questions about that company. So we are going to say, eh, I am going to pass on that one because I am not sure. They may have generally solicited and advertised in a way that there could be a problem, and we are not signing up for that.

Chairman SCHWEIKERT. Okay. Paul, thank you for letting me step on you. But this is something we have been hearing. We have done some of these in other places, and this has become a focus we hear over and over and over.

Mr. CURZON. That predictability is really big.

Mr. GOSAR. When you hear these two gentlemen speak, coming from your perspective of looking towards the capital formation to start up a new idea, do you have any new thoughts listening to them?

Mr. NOJOUMI. I believe it boils down to conversations and communication, talking about what is so important, and it is not just from a financial perspective or an engineering perspective. It is education, education from an institutional standpoint like ASU or high schools, but also grassroots, from the bottom up. So in corporations like GoDaddy that are established, I spent six years there, and Bob Parsons really grew this amazing company, a workforce that looked up to him and aspired to the American Dream of entrepreneurship.

I know 2,000 people there right now who are dying to get into entrepreneurship. They just don't know—they don't have a road map. They don't know what steps to take. They don't know what resources are available.

Mr. GOSAR. You saw what Tom was talking about in which they have that kind of expo. Shouldn't that be something that is highlighted amongst the entrepreneurial community?

Mr. NOJOUMI. Absolutely it should be, and I think we need to take it one step further. I am not sure how often that expo takes place, but it would be good to have weekly workshops where entrepreneurs—industry calls them wonktrepreneurs. I am not a fan of that. But they can actually go to these, attend, and get a seminar or some sort of introduction to growth hacking or recruiting, which is huge for startups. It is a massive challenge. Or advice on institutional investors and how to raise capital, and how to form your company, the structure.

Mr. GOSAR. Do you reach out? I mean, you are a pretty smart guy. Have you reached out to either of these two gentlemen?

Mr. NOJOUMI. Unfortunately, I haven't. I wasn't aware and hadn't had the pleasure of meeting either one of them. In terms of raising capital, fundamentally what we believe is our problems are our problems, right? So if we can't solve our problems with the money that we bootstrapped with, I am not going to raise money to figure out how to go and solve my problems. So step one is to figure out my problems, find solutions, raise capital from an individual or entity that has expertise. And the deal flow is so limited here in Arizona, they don't have the same expertise, unfortunately.

Mr. GOSAR. But it seems like communication here is what is lacking.

Mr. NOJOUMI. Yes.

Mr. GOSAR. But it is a two-way street. It is not just from the top down. It is from the bottom up.

Mr. NOJOUMI. That is correct.

Mr. GOSAR. What kind of investigation did you do into those groups?

Mr. NOJOUMI. I looked into—I did some Google searches. I reached out to some contacts of mine. I found 1,200 capital firms in Arizona. The largest one I believe was Great Hawk. I looked at their investments and their portfolio, and really what we are looking for is specific expertise along with the capital, and we couldn't find that in Arizona.

Mr. GOSAR. Did you approach them into an opportunity, or did you just review them on the Web?

Mr. NOJOUMI. I reviewed them on the Web, I researched them online.

Mr. GOSAR. Why wouldn't you directly try to contact them to have some type of conversation? I mean, I understand diversified portfolios. So just because somebody does something over and over again doesn't mean they are not receptive to new ideas.

Mr. NOJOUMI. Right, that is very true. I didn't reach out to them because we just weren't actually ready to raise capital yet, and I thought if I was going to raise capital, I should probably target someone more informed in that sector.

Mr. GOSAR. Jim, one last question. Tom made an aspect in regards to where we can go with this, between the state trying to grow this. Do you have any other ideas in regards to that?

Mr. GOULKA. Specific to Arizona?

Mr. GOSAR. I mean, somehow we are lacking here, and it sounds to me from your initial statements that we have this fixed group, and it doesn't seem like it is growing very much. Am I quantifying that quite right?

Mr. GOULKA. Yes. We have as a challenge to reach out to other like-minded people that we are not in contact with already. That is one of our jobs. And I would not say that government is supposed to do my job for me.

On the other hand, in New Mexico, part of the deals that went back to the vetting of the contracts for Sandia and Los Alamos required some effort on the part of the contractors to participate in early-stage technology development. I think TVC is the consequence of that. Years ago I met with people from there who had University of New Mexico people, Sandia people, Los Alamos people, and the venture community all participating together to try to identify the needs of the local entrepreneurial community, recognizing that most of the entrepreneurial activity was going to come from Sandia, Los Alamos, the University of New Mexico, and New Mexico State.

So it was, if you will, government focused, because that is the nature of the state, but there is a page out of that book that we can take. We have major contractors here, and one of the characteristics of our community is that the major contractors in technology have a very, very limited interaction with the early-stage community here. You don't find, like you do in California, in both Southern California and in Northern California, the big company, the big oak tree with all these acorns sprouting into new oak trees all around them, and a little incentive for that is part of the contract. To let them work out with the eagles I think would be a very valuable thing. It wouldn't cost anybody any money.

Mr. GOSAR. Would that be—in biotechnology, I see ESU over there, and I am just kind of interested along these lines because it seems like with biotechnology, being a dentist for 25 years, and the only difference between me and young folks is the price of my toys. But the whole future of medicine I think goes a lot through Arizona. Does that mean that there has got to be a better communication or a structure that is established with institutions like ASU?

Mr. GOULKA. There is work going on in that that is pretty serious, Biodesign being the best example of that. BioInspire is here, BioExcel. We have a variety of entities that are participating in figuring out how to do that at the earliest stages, and it is now starting to work.

The illustration I will give to you is that BioExcel funded six companies to a modest degree. Two of those companies made it through our screening process. Two of them presented to our membership for the next round of funding on the 12th of September, and both of those are in due diligence right now, one with a very large number of people. You are particularly interested in this, Congressman Gosar, given your background. And the other a smaller number.

But we have serious interests now, and that was technologies that were—one technology actually came from another university. The other was originated at the University of Arizona. People are here being incubated in an incubator, advised by BioExcel, and now we are looking at it. So the steps are working right, but it is still very new.

Mr. GOSAR. And the last question. You just brought up these incubators. NAU has got one, Flagstaff has got one, ASU has got one. Are those the kind of a bridge that you are looking at as being fundamentally the thing that you are looking at for the future?

Mr. GOULKA. There is a degree of fashion in that right now. There are lots of them growing up, and we will see the marketplace will prevail, and some will succeed and some won't. But those that are doing a good job do a very good job. We see a regular flow of opportunity from them. We actually get members from our group as a consequence of NASA. So they can be very helpful. They are the kinds of places where entrepreneurs can go for a lot of the training.

The third company that presented out of the three that we had on the 12th was at an incubator here. So all three of our companies that were selected to present to our membership out of the 25 were incubated.

Mr. GOSAR. Thank you.

Chairman SCHWEIKERT. Thank you, Paul.

Something miraculous, we are actually exactly on time.

The fact of the matter is, we are sitting in Skysong right now. I mean, this was the community and ASU's venture to try to actually create a physical structure for what we are almost talking about.

My last question is the one that always gets me in trouble. Tom, I am going to start with you. Well, you know, he is always picking the lawyer.

From our offices, new members of Congress. From the institution that ASU is and being a very innovative—I mean, it is my alma mater. I believe in maroon and gold. So also what we have in the community.

What do we do? What do we do to make it better? Is it something as simplistic as dramatically expanding the events where we bring people into the same room? Is it a much better registry of information? Is it just understanding it is going to work on many levels? If you were a policymaker, how do you make the access to capital for growth in this community work?

And can I beg of you to pull the mic slightly closer to you?

Mr. CURZON. Personally, I don't think there is any silver bullet. I think a rising economy will make a world of difference. I think when people feel like they have money that they can invest and don't have to be putting it away in a scared mode, they will be more inclined to invest. I think that is a piece of the puzzle.

I think we should recognize that Phoenix and Arizona has made, in my opinion, enormous strides over the last three decades. The amount of infrastructure here, the amount of activity—we now have more than two dozen incubators. We have universities working very hard at this stuff. It is really hard stuff to do, and as you guys know, entrepreneurialism is all about failure. It is the pioneers with the arrows in their asses, not the settlers who came after. So that is the part that we are talking about.

But if you have the rising tide, I think that provides the context for the successes that lead to the serial entrepreneurs. I think making it easier, not harder, to invest the capital—it is around the rules that we talked about earlier in the discussion. If we can make

the rules clearer, and less paternalistic would be a nice thing, but at least clear to be able to work around, I would do that.

Chairman SCHWEIKERT. Okay.

Jacob, almost the same question. From your experience of being one of those entrepreneurs, what would you change? What would you hope to see? What do you need, do you think, for us to grow in this marketplace?

Mr. NOJOUMI. Let's say, first and foremost, you identify and organize thought leaders that have followings, easier to reach. Instead of reaching 6 million people individually, you have six individuals who have a million persons following, right? A rough example. But you identify those leaders in the community first on a government basis level, and also in educational systems like ASU, and also in the entrepreneurial and private sector, and you align their focus, an initiative for an ecosystem for Arizona. So it starts with a conversation, align the vision.

Secondly, we learn from other ecosystems that have proven to work—Boston, even Santa Monica right now. They are calling it Silicon Beach. Boston and Texas. So we learn what initiatives we have there, what support groups.

I am working with a team called the House of Genius. They have 14 locations across the world, and I was on their panel in Santa Monica and I thought what a great opportunity for Arizona. It is a safe environment for entrepreneurs to come pitch, and it is to an esteemed panel without the pressure of a make-or-break scenario.

Working with them to bring them to Arizona, that is one example. I think it is a multi-faceted approach, and I don't think it is the government's responsibility to do it. I think it is their responsibility to organize and leverage the resources.

Chairman SCHWEIKERT. Jim, sort of that same question. I know we have some great talent here, but I always have this fear that somehow we are all not ending up in the same room. What would you change?

Mr. GOULKA. When people talk about Silicon Valley, they say, well, you get lots done there, everything happens there, and there is this vision of all you need to do is go to Sand Hill Road and say you are looking for money, and the VCs come out of their offices with their bags, "How much do you need?" And, in fact, VCs in Silicon Valley and the angel groups in Silicon Valley are just like we are. It is 5 percent get funded.

There, they understand competition. Here, we have still an attitude of, well, I am doing this, so you should be giving me things. I hear that a lot.

So what we need to have is an attitude like we are going to get in the big leagues, which means it is competition. There are winners and there are losers, and if you are a loser, as Tom said, failure is an important part of being an entrepreneur. You learn from being a failure. You don't learn from your successes.

So it is okay to fail, and it is even better to win, and we should extoll our big-time winners, which we don't. So I am saying, at the same time, raise our standards. The last thing you want to be is the batting champion in Triple-A, not make it to the bigs. They don't extoll themselves. Nobody is going to walk around saying, "Look what I did last year, I was the best minor leaguer around."

We want to be in the bigs, so we have to focus on helping the best get noticed and celebrated as our lions and say, yes, we compete, and we are going to compete with the best.

Chairman SCHWEIKERT. Paul had one other thing.

Mr. GOSAR. I only have one more question.

Mr. CURZON. I think we have—of the competing companies?

Mr. GOSAR. Mmm-hmm.

Mr. CURZON. Sure. We ask them about their experience and their comments and suggestions.

Mr. GOSAR. I am just real interested because a lot of times what you do to expand your universe other than raising the bar is by finding out from the applicant pool how did you find out about us, how did you find the process, what would you add additionally. It helps to attend where like minds gather.

Mr. CURZON. A lot of times, if you are asking the 10 who presented, we try and follow up with them and see about their experience. If they were able to raise capital afterwards, they are happy. If they weren't able to raise capital, you know, they are not happy.

Probably the criticism we have had, in fairness, particularly in more recent years, is that our audience has not had enough investors in it, that we haven't been able to attract the investors, and there are a couple of reasons for that, one of which is the number of investors nationally who are interested in early-stage investing, which is what we have mainly is early-stage stuff, has gone away. There are very few professional funds that actually invest in early-stage anymore because they either went up-market or disappeared.

So, I mean, Congressman, we are actually in the middle of a pivot with the conference right now to try and address that very issue. We are working on it to make it more interesting and broader and bigger to bring in more companies, to have the benefit of the exposure and hopefully more investors because of responding to the kinds of inputs and our own observations, frankly, sitting at the conference, is trying to do something new and different.

Chairman SCHWEIKERT. Thank you, Paul. That is actually where we need to go.

We are going to wrap up the formal portion of this, and then I am going to ask if you would be willing to engage in something a little quirky.

I also need to thank Skysong. Thank you for letting us invade your space. It is appreciated.

I also need to thank our witnesses.

On a personal level, I have a personal fixation on—I mean, in our office, we have actually been trying to create lists of people that do compliance accounting. We have had some great success with drawing some big REITs here, some more folks who are managing private equity out of this community. Now I need this community to start knowing each other and see if there is a level of—what is the term?—cross-pollination there, building, as you used the term, ecosystems.

One of my other frustrations is we had a great success with the JOBS Act. We proved we can do bipartisan legislation all the way through the process. And then I have my brothers and sisters on both sides of the aisle absolutely flabbergasted we are heading to two years of rule sets coming from the very bureaucracy that talks

about helping us, and we are supposed to be creating job growth. Who would have ever thought we would lose the momentum in the bureaucracy? And that is why many of us have played with the idea of what do you have to draft in a JOBS Act 2.0—I was told I would get in trouble for using that title—to either clean up the definitions, fix the tree of liability and things like crowd funding, and also take away the SEC's ability to take two years to do something that should be simple in rule sets.

Maybe we have to be much more definitive in saying it will be in this fashion. I think that is actually the future of where the legislation is going to go as we sit and work on the details of that.

And with that, I ask unanimous consent—and considering it is only you and I, you had better not argue with me—that any submitted or supporting materials be made a part of the record.

Without objection?

One day he is going to go, "No."

Also, to our witnesses, be prepared over the next couple of weeks, there is a very good chance we may send you a couple of other questions to sort of fill in where either the question didn't get us where we needed, some bits of information, or something else has come up.

And with that, the hearing is closed.

[Whereupon, at 2:14 p.m., the Subcommittee was adjourned.]

APPENDIX

Testimony

Of

James Goulka

Managing Director

Arizona Technology Investor Forum

To the

Subcommittee on Investigations, Oversight and Regulations

Committee on Small Business

U.S. House of Representatives

Scottsdale, Arizona

September 23, 2013

Chairman Schweikert, Members of the Subcommittee on Investigations, Oversight and Regulations, staff, ladies and gentlemen, my name is James Goulka. I reside at 2525 W. Lompoc Avenue in Mesa, Arizona. I am the Managing Director of the Arizona Technology Investor Forum, a 501(c)6 entity comprised of 71 accredited investors who collaborate on finding, evaluating, and investing in early stage technology companies. In the 6 years of its existence, we have invested over $7.25 million of our own money in 29 companies, 24 of which are based in Arizona. Together with our counterpart, Desert Angels in Tucson, we are by far the most active investors in early stage companies in the state. It is an honor to be here to offer my testimony to the Subcommittee. I will be brief.

Most people acknowledge that small businesses drive American job creation and innovation. Whether providing a new cancer diagnostic or a mobile phone app, opening a taqueria or doing contract manufacturing, small businesses hire people, lease space, buy services, and pay taxes.

I want to focus my comments today on a subset of American small business: startups. These are the creation of one, two, or three individuals, who take the exceptional risk of taking something that doesn't exist—an idea—and making it into a reality that solves a problem in a new way, causes new ways of behaving, or, simply, makes life better.

These businesses start out by the investment of time and energy from the founders—so called "sweat equity"—and the capital they can contribute to their new enterprises. Few founders are wealthy: most are middle class; many are young. They use hard-earned sav-

ings to start their businesses and live frugally. As they need capital to buy equipment, lease space, pay other people providing them services, they tap their friends and family members who may not know their business idea, but they do know the founders.

Occasionally, a startup can grow sufficiently to generate sales and profits with no additional capital. Such businesses usually serve a gaping need of a customer group for a pre-existing service. These quick successes strengthen our economy and are the bedrock of our local communities.

Others, though, are more uncertain: they may disrupt current practices, they may propose solutions that have never existed before, or they may be creating new market niches. These are the engines of innovation. Think Facebook, Amgen, or, more locally, GoDaddy, Infusionsoft, or Medicis.

These startups, with high potential but equally high risk, soon run out of capital from their friends and families and have to turn to outside investors. In some situations grants, such as SBIR funding from federal agencies or Innovation Challenge Grants from the Arizona Commerce Authority provide important early capital to these businesses.

For capital beyond these sources, founders and other entrepreneurs turn to outside *investors*, people and institutions with capital resources they intend to invest to achieve economic returns.

The most obvious sources of funding for businesses are banks. But, for more than simple transactional offerings like checking accounts, startups are not attractive to banks because they do not meet the banks' fundamental credit criteria. Startups, by definition, have no history, and are completely unpredictable. Most have no profits or collateral. Most entrepreneurs have little personal history with a bank, many have no previous experience as founders, and few are willing or able to provide personal guaranties on loans to their companies. Startups are, in reality, unbankable. And American taxpayers, having experienced the financial meltdown of the past several years, are not enthusiastic about banks taking on this kind of risky business.

We do have investors who are interested in providing capital to this segment: individuals, generally referred to as angels, and institutions, generally called venture capital firms. These are sophisticated individuals and firms who are have the capability to assess the risks of new enterprises, make judgments about them, and accept what they hope are reasonable risks in return for acceptable returns. Importantly, they understand and accept that the risk of total loss of an investment in any private startup is high.

In late 2013 venture capital firms tend to manage funds sufficiently large that they rarely invest in funding rounds of less than $2 million. Angels, whether investing by themselves or in groups, are the principal source of funding for entrepreneurs seeking their first rounds of outside capital in lesser amounts. The Center for Venture Research estimated that angels invested $19 billion in 35,000 US companies in 2008. And that was the year when the financial crisis hit.

A major intent of the JOBS Act of 2012 was to increase the opportunity of American startups to raise capital by enabling more people to invest in them. This meant addressing two issues: (a) redefining who could invest in the securities issued by startups; in other words, redefining an angel investor; and (b) changing the rules on how startups—the potential issuers of private securities—communicate with those potential investors.

Solicitations—Private and General

Rule 506 of Regulation D that governs the issuance of private securities had come to be seen by some as a constraint on the ability of issuers to reach potential accredited investors whom they do not know in advance. To address this, the SEC recently subdivided Rule 506 into two sections: 506(b) deals with purely private transactions, and the new Rule 506(c), which relaxes the constraint and enables issuers to publicly advertise their issues—do a general solicitation—in the hope of attracting those unknown investors. In exchange for the freedom to advertise, the issuer must now meet an array of requirements and take the "reasonable steps" to assure itself that the investors are accredited.

Definition of Accredited Investor

Regarding the definition of angel, most angels fit the SEC definition of "accredited investor," which means meeting a net worth test (of $1 million not including a residence) or an income test (of $200,000 in each of the previous two years for a single person. That number increases to $300,000 for married persons). The intent of the Securities Act of 1933, was to protect the general public from unscrupulous promoters who might cajol unsophisticated individuals into making investments in spurious companies. The concomitant though was that a sophisticated investor could fend for himself, which he or she would do by careful evaluation of opportunities, collaborating with likeminded investors, and understanding the risks involved. He also has the ability to absorb loss.

Over the past 80 years, the practice arose among angel investors of self-declaration of accredited investor status. This usually takes the form of a document wherein an investor identifies how he/she qualifies as accredited. I have attached the form that the Arizona Technology Investor Forum requires of all members. Most organized angel groups such as ours use a form substantially identical to this. Furthermore, the documents relating to every privately issued security that I have seen includes a substantially similar statement by each investor. This means that at every investment action, each investor restates his/her status as an accredited investor. And further yet, the securities documents of a private issue contain legends clearly stating the riskiness of an investment in those securities. Combined, these make compelling arguments that angels, especially within organized angel groups, but also experienced independent investors, know what they are doing, understand the risks, and meet the intent of the words "accredited investor."

One would think, then, that the sheer scale of tens of billions of dollars invested by angels each year and current accredited investor practices prove that the system works and would form the baseline for any expansion of the definition of an investor who could invest in privately issued securities. Presumably, that is the case for purely private solicitations under Rule 506(b).

However, the effect of the new rules issued by the SEC in Section 506(c) of Regulation D that go into effect today create serious impediments for the same angels to invest in new issues by private companies if the means of communicating the opportunity is different, i.e. by general solicitation:

(a) If accredited investors consider investing in a private security which meet the test of a general solicitation, they may be required to provide to the issuer of, potentially, a third party private, highly confidential information in order to buy something for which they are paying 100% cash at the time of purchase.

This contains the absurd notion of an investor disclosing his/her tax return to a relatively unknown person in advance of a transaction that may or may not close. Alternatively, if an intermediary is used, new costs are added to a transaction. These could be substantial, especially given the uncertain requirement for periodic updates. And that does not obviate the potential lost privacy or harmful subsequent disclosure. Many angels polled on the subject state that they will refuse to provide the kind of information required. Thus the rules needlessly shrink the pool of existing investors.

(b) The onus on collecting that information is placed on the issuer of the securities, with serious sanctions on the issuer if it does not fully comply with these requirements. This includes the potential prevention of fundraising for a year, which would effectively destroy the issuer.

When considering a general solicitation, an issuer now has to weigh the potential benefits of attracting new investors against the costs, most importantly the improbability of reasonably satisfying itself and the SEC that every one of its investors is accredited. In my view, if investors are required to provide the personal information, they will not invest in a deal that is generally solicited. The purpose of relaxing the prohibition on general solicitation will have been defeated.

Fortunately, the SEC included in its rule-making the provision for verification through a "Principles-Based Approach" which contextualizes the investors by their experience, previous knowledge of the person(s), the minimum scale of an investment, and other elements. Ambiguous now, I recommend that this section be more thoroughly defined. There is, in my view, an opportunity to define accredited investor by the traditional self-declared method, supplemented by observations of actual experience, such as previous investing in private transactions and by education in high risk investing. For both of these, organized angel groups such as the Arizona Technology Investor Forum, provide structured and thorough opportunities and programs. Illustrative of this are our

multi-step screening process in which nine experienced investors vet all candidates to select the few that members are shown; our Sidecar Funds, which enable new investors to learn by following others, and by our education programs, such as the Valuation Workshop created by the Marion W. Kauffmann Foundation which we are bringing to the membership in October. The Angel Capital Association has provided input to the SEC on how organized angel groups such as the Arizona Technology Investor Forum work and suggest formalizing membership in an organized angel group as sufficient verification of accredited investor status.

Until the rules clear further, the Arizona Technology Investor Forum will limit consideration to private solicitations only, thus ensuring that our members do not find themselves accidentially in situations where they do not wish to be.

These issues are particularly important for Arizona. In our state, we have few venture capital resources, so angels, especially organized angel groups such as Arizona Technology Investor Forum and Desert Angels, are a critical part of the state's technology ecosystem. Together, we are about 170 investors. Arizona needs, if anything, more angels investing here, so the rules should help attract new investors, not dissuade them from participating.

Thank you for your time and willingness to listen to my testimony.

Building an Ecosystem; Access to Human Capital

Good afternoon Congressman Schweikert, Chairman Graves, and the esteemed members of the Small Business Committee. My name is Nima Jacob Nojoumi and I come from a long lineage of entrepreneurs. I am the Co-Founder and CEO of itsWorth.com. I recall when Shad Nojoumi initially approached me with the concept for our big data startup: He said, "Nima, I want to valuate the world." That statement put a smile on my face. After doing thorough research I came to the realization that there is no reason why, with the technologies available today, we couldn't create the world's first valuation engine. The concept both simple and powerful: An engine that provides users with up to date, real world, financial values of virtually anything and everything. itsWorth.com is the "Goggle" of values. We're on a mission to provide an unbiased valuation of the world where people can contribute and feel empowered to make informed buying and selling decisions.

My three best friends and I, who at one point were all colleagues at GoDaddy, decided to pool our life savings and take the chance—to live the American Dream. Today we have 8.4 million products in our database and are six weeks from releasing our Software-as-a-Service platform. We are grateful for generous local experts like Tyler Rives from Silicon Valley Bank in Tempe and Evan Gilbert at Polsinelli Law Firm in Phoenix that have positioned us for success. I have traveled to California ten times this year to gain access to advisers and talent, and to build relationships with angel investment groups and with the venture capital community. It has been a long and hard journey. I am here to say entrepreneurs in Arizona should not have to leave the state to gain access to human capital. The time is right. Arizona has an emerging startup community. It needs to develop, mature, and grow up fast. That is the problem and the opportunity.

Fortunately for us there are celebrated experts that have outlined structures, systems, processes and the social architecture to build an ecosystem. I cite Dr. Barry Stein's 1974 MIT dissertation: *"Human resources are the wealth of nations; each nation has the responsibility as well as the need to develop and conserve them. But human resources are not the simple equivalent of physical persons, as mere existence does not automatically create human beings. Rather they develop through participation in social life."*

Mr. Mark Tomizawa, a strategist and entrepreneur has invested the past 5 years developing social architecture to deploy in real time. And I quote him, *"As for the ecosystem, we need freedom, support and know-how as individuals at work, in school and in life to do the right thing. That means more humans supporting each other, live and in real time. That means passing knowledge, mindfully, from generation to generation. That is part of how a healthy society is defined."*

I am here to say that as a state we are leaving money and opportunity on the table. We can and we must do better. We must coordinate better and connect the dots more strategically. The stand-

alone organizations must join forces to create an ecosystem of opportunity, an ecosystem of human and financial capital, an ecosystem of local job creation. We can and must become know as a great state where great ideas come to life. To cross the chasm from communities to ecosystem we need to leverage existing resources, like thought leaders such as Dr. Stein & Mr. Tomizawa and bridges to work on an integrative level. Tyler Rives, Evan Gilbert and I are examples of bridges. We naturally connect people to resources and initiatives. I believe conversations like these are essential and will serve as a catalyst for change and growth. I am not asking the Small Business Committee to create solutions; I am asking that you leverage and organize existing capital, whether it is human or financial, to give entrepreneurs the opportunities they need to meet today's evolving market conditions and to remain loyal residents of the great state of Arizona.

Thank you to the esteemed members of the U.S. House of Representatives Small Business Committee, Congressman Schweikert and Chairman Graves for the honor to speak today.

Testimony of Thomas H. Curzon
Before the House Committee on Small Business
September 23, 2013
SkySong Innovation Center
Scottsdale, Arizona

Thank you, Mr. Chairman and Members of the Committee.

I am pleased to appear before the Committee today on behalf of Invest Southwest to tell you about The Invest Southwest Capital Conference (Invest Southwest) and its place and role in the Arizona entrepreneurial ecosystem. By way of background, I am a senior partner with Osborn Maledon, a 50-lawyer Phoenix law firm dedicated exclusively to the Arizona marketplace. Our corporate practice focuses on representing entrepreneurs and growth companies, anywhere from zero revenues to over $200 million in annual revenues, and anywhere in their life cycles, and we have special expertise with start-ups. So we've assisted companies in angel financings, venture financings, buying and selling companies, IPOs and exit transactions and everything in between. And as part of our commitment to Arizona, we have been deeply involved in the Arizona entrepreneurial ecosystem, and I personally have been for about 33 years.

To that end, our firm was one of the founding firms of Invest Southwest in 1992, which was then known as the Arizona Venture Capital Conference, and I have personally been involved in it since the mid-1990's, including serving as Chairman of the Conference for 2006–07, and currently I am on its Board of Directors. The Conference itself is a nonprofit corporation, and is the principal early stage investor conference in Arizona. It is organized and run by volunteer service providers and entrepreneurs who are keenly interested in having a flourishing entrepreneurial ecosystem.

The Conference was originally founded in 1992 as a conference focused exclusively on attracting venture capitalists to Arizona to potentially invest in our start-ups. Historically, the typical structure of the Conference has included using a selection committee made up predominately by venture capital investors to select from a pool of applicant start-ups ten to 12 companies who then were groomed to present 10 minute pitches to the investor audience at the Conference. In 2004, after the Dot Com Bust, and the resulting dramatic fall off in venture capital investing throughout the US, we restructured the Conference for 3 years to focus on presenting to angel investors rather than venture capitalists, and then when the venture capital industry began reviving, in 2006 and 07 we restructured again into what is now known as Invest Southwest and began focusing on connecting the region's most promising startups and emerging growth companies with an audience of angel investors, venture investors, entrepreneurs and service professionals. In other words, we were focused on the stage of company development of most of the companies then prevalent in Arizona (being relatively early stages) and the investors who were interested in that company stage, which was a mix of angels and venture investors. To date, we believe presenting companies of Invest Southwest have

received more than a quarter billion in investment dollars since the inception in 1992.

The Great Recession has, of course, dramatically affected the entrepreneurial ecosystem in Arizona and, just as following the Dot Com Bust, early stage venture capital has become much more scarce. Happily, this time around, though, the angel investment community has been actively filling the gap, particularly under the leadership of two leading angel groups, Arizona Technology Investors Forum (ATIF) in Phoenix and Desert Angels in Tucson. In addition, in the most exciting development in a number of years in our space, Arizona is now the home of the largest (by aggregate grant award amount) business plan competition in the United States. This program, known as the Arizona Innovation Challenge, is put forward by the Arizona Commerce Authority (ACA), and takes the form of two competitions annually, each awarding up to \$1.5 million in total grants (typically in the form of 6 grants of \$250,000 each). Prior to the current cohort, there have been more than 800 applications to participate in the competitions. The judging process is accomplished by a pool of more than 50 volunteer entrepreneurs, investors, executives and other experts from our ecosystem who are giving back to foster capital formation and employment growth in Arizona. The fifth cohort of the Challenge is now in process.

In my opinion, the importance of the AIC competition cannot be underemphasized. Certainly the cash awards are significant to the winners. But it is equally significant that the competition is bringing public attention to hundreds of new companies and helping to connect them with resources available in the ecosystem, including programs such as ACA's Venture Ready, which are designed to help groom promising companies in the competition for future successes of all kinds.

Because of this significant flow of companies, Invest Southwest and the ACA are partnering together for the upcoming Invest Southwest conference and will be launching an innovative new event format designed to help Arizona better address current market conditions and continue the growth of its ecosystem. We have noted the recent Kaufman Foundation report showing that in 1990, Phoenix did not show up in the top 20 metropolitan areas for high tech start-up density and by 2010 we have found our way to 13th largest on that list. We at Invest Southwest believe that through the continued efforts of the Conference, ACA, the Arizona Technology Council, the numerous incubators and accelerators we now have, as well as the contributions of ASU, UofA and Thunderbird, and others, Arizona will continue to make important gains as a place where businesses will continue to be created and thrive at an increasing pace.

I will be pleased to answer questions and discuss the above matters with you, or relating more generally to start-up activity and financing in Arizona.

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